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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 25 2005

EAC 03 112 51954

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research fellow at Johns Hopkins University School of Medicine (JHUSM). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner submits letters from several witnesses. Counsel states that these witnesses are "*well-known experts and established institutions from the United States and abroad*, most of whom are *clearly independent of*" the petitioner (counsel's emphasis). The petitioner's initial submission contains five witness letters. Three of the witnesses are on the faculty of the same department at JHUSM where the petitioner now works. The other two witnesses state that they have known the petitioner since the 1980s, when they and the petitioner were all undergraduate students at Seoul National University. Counsel does not explain how a majority of these co-workers and classmates of the petitioner "are clearly independent" witnesses.

We emphasize that the witnesses' ties to the petitioner do not diminish their credibility. At the same time, a key question is whether the petitioner's work has had any appreciable impact beyond his own circle of collaborators and superiors. When all of the witnesses are from within that circle, it falls upon the petitioner to produce alternative evidence to establish that one need not be the petitioner's classmate or co-worker to have heard of his work.

Professor [redacted], chairman of Pediatric Infectious Diseases at JHUSM, states:

> [The petitioner's] current research at the Johns Hopkins University School of Medicine involves a unique feature of the pathogenesis of bacterial meningitis. . . . [The petitioner's] current research activities . . . utilize several cell biological approaches to the pathogenesis of bacterial meningitis such as confocal and electron microscopy studies and isolation and purification of bacteria containing vacuoles in human brain endothelial cell biology in response to meningitis causing bacteria. Other investigators throughout the world cannot readily reproduce [the petitioner's] unique expertise in this area.
>
> [The petitioner's] strong background in cell biology allows for his demonstration of a novel feature of bacteria and brain endothelial cell interactions and it is likely that his research would have a profound impact on our understanding and prevention of bacterial meningitis.

Prof. [redacted] adds that the petitioner "has all the important elements to become a successful scientist."

Dr. [redacted], associate professor at JHUSM, states: "I have had several opportunities to work closely with [the petitioner]. . . . [M]y impressions are that he has a keen overall background as a cell biologist, that his work is reliable and precise, [and] that he works assiduously. . . .More importantly, [the petitioner] knows

to ask the right questions. He has exceptional scientific abilities, more so than almost any postdoctoral fellow I have come in contact with." Dr. [redacted] states that the petitioner's doctoral work at the University of Tennessee "represented an important and novel observation," and that the petitioner's "expertise as a Cell Biologist has been paramount to my NIH-funded studies regarding how African trypanosomes . . . and *Borrelia burdgorferi* . . . migrate across the human BBB [blood-brain barrier]." Dr. [redacted] assistant professor at JHUSM, deems the petitioner "a very talented and contributing co-worker who, in my opinion, is essential to the continuity and success of our research program."

Dr. [redacted] assistant professor at the University of Kentucky Medical Center, was the petitioner's classmate at Seoul National University, graduating alongside the petitioner in 1986. Dr. [redacted] states that he has known the petitioner "since [the] early 1980s. . . . Since then, I have communicated with him very closely." Dr. [redacted] states that the petitioner's research topic, involving disease-causing organisms that invade the brain, "is a very important and urgent research subject," and that the petitioner "has excellent techniques" and "has been regarded as the key player in the current project on the mechanism of bacterial infection to [the] human central nervous system." Dr. [redacted] of Chiron Corporation states "I have studied together with [the petitioner] at Seoul National University for 7 years," during which time the petitioner "distinguished himself as an extraordinary student." Dr. [redacted] states that the beneficiary's current research "will be useful to develop antimicrobial chemotherapy."

The petitioner submits copies of published articles he has written, but no objective evidence (such as independent citations) to establish the impact of those articles. We cannot ignore that the most accomplished scientist among the petitioner's witnesses repeatedly refers to the petitioner's importance and influence in the future tense, such as the assertion that the petitioner may someday "become a successful scientist."

The director denied the petition, stating that, while the petitioner's "work appears noteworthy," the evidence does not indicate that the petitioner has "already made an impact on the field." The initial appellate submission consisted only of a statement from counsel. Counsel stated that the director's decision "was contrary to the applicable case law and regulatory provisions," but did not elaborate. Counsel further indicated that a brief would be forthcoming.

Subsequently, the petitioner has submitted new letters, copies of the petitioner's work, and arguments from counsel. Counsel does not specify what "applicable case law and regulatory provisions" the director has purportedly violated, except to state that the petitioner "meets the standards established by" *Matter of New York State Dept. of Transportation.*

The research writings (apparently unpublished manuscripts) submitted on appeal demonstrate that the petitioner has been a productive researcher, which the director did not question. Such productivity, however, is not inherently indicative of eligibility for the national interest waiver. By law, the job offer/labor certification requirement generally applies to advanced degree professionals, including scientific researchers. Producing published work and conference presentations indicates professional competence. If the very existence of such work were sufficient to warrant a waiver, then the job offer requirement would apply only to unproductive scientists incapable of producing original or relevant work. The basic purpose of scientific research is to add to the general pool of knowledge; a researcher does not merit a special waiver merely by doing his or her job.

The petitioner submits four new letters, all from JHUSM faculty members (including two of the initial witnesses). These letters are favorable toward the petitioner, but by their very nature they cannot serve as first-hand evidence that the petitioner's work has attracted significant notice outside of Johns Hopkins

University. Professor [redacted] states that the petitioner's "research findings are already being applied by other microbiologists, infectious disease specialists, and neuroscientists throughout the United States and will thus benefit the nation as a whole," but he does not cite any supporting evidence for this conclusion. The record shows that the petitioner's research is grant-funded, but the petitioner has not shown that reliance on grant funding is unusual among university-based researchers. The available evidence does not show that the petitioner's work has attracted significant attention, or exerted an unusually high degree of influence, outside of the universities where he has worked and studied. The witnesses, on appeal, generally discuss the impact they believe the petitioner's work *will* have, rather than existing impact beyond the dissemination of information generally expected of productive researchers.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.